



Committee Secretary  
Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**31 August 2007**

Dear Secretary

**Inquiry into the Australian Securities and Investment Commission (Fair Bank & Credit Card Fees) Amendment Bill 2007**

This submission contains an outline of:

- Virgin Money's position regarding exception fees; and
- Virgin Money's concerns regarding the draft exposure bill.

**Background**

Virgin Money is the financial services arm of Sir Richard Branson's Virgin Group. Virgin Money entered the Australian financial services market in May 2003. Virgin Money's products include the competitive low-rate and award winning Virgin Credit Card, of which Westpac Banking Corporation is the card issuer. To date, over 750,000 cards have been issued.

Unlike the majority of credit cards available in Australia, Virgin Credit Card has no annual fees. Virgin Money has also made a public commitment not to introduce annual fees.

**Virgin Money's position regarding exception fees**

It is a key priority for Virgin Money to ensure our customers have transparency and information regarding their relationship with us and use of the Virgin Credit Card. We want our customers to fully understand key aspects of their Virgin Credit Card, particularly what the fees are and how they work.

We provide full information on all fees to our customers as part of their application process. Virgin Money's aim is that all fees should be clearly spelt out for our customers "up front and in black and white".

Unfortunately, the commercial reality is that we have to have some fees/charges. We make the following comments with respect to exception fees:

- Exception fees are avoidable.

We encourage our customers to take responsibility for their finances. We advise customers that it's important for them to check their balances before transacting, and review their use of their credit card spending habits to identify where exception fees might occur.

- Late payment fees (referred to as "missed payment charges").

Virgin Credit Card's missed payment charge is lower than the average late credit card payment fee charged by the big five banks<sup>i</sup>. In addition, Virgin Credit Card has not increased its missed payment charge fee since the launch of the Card in 2003.

Most importantly, we provide customers with a grace period whereby we remind customers twice before a missed payment charge is applied. This means we provide our customers with a written reminder and, in the majority of cases, follow up with a phone call.

- Overlimit fees.

Virgin Credit Card does have overlimit fees which can apply when we use discretion to allow customers to transact even though there are insufficient funds in that customer's account to cover the payment or if the customer's overlimit has been exceeded. We consider that by allowing the customer to make the payment or withdrawal, we may help to minimise the inconvenience (and indeed, possible embarrassment) associated with having a transaction declined.

Virgin Credit Card's overlimit fee is lower than at least two of the big banks<sup>ii</sup>. Further, Virgin Credit Card has only increased its overlimit fee once during the period 2003 to date (by an amount of \$5).

- Inward cheque dishonour fees

Virgin Credit Card has never charged inward cheque dishonour fees.

### **Exposure Draft Bill**

We make the following comments with respect to the exposure draft bill (as contained at <http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/21060705.pdf>):

- Section 12FA

#### ***12FA Penalty fees if customer cannot control liability***

*(1) A person must not, in connection with the supply or possible supply of financial services, impose a fee, penalty or charge of any kind on a customer in consequence of a failed transaction if the customer had no actual or constructive knowledge that the transaction would fail.*

*(2) Without limiting the generality of subsection (1), an example of a failed transaction where the customer had no actual or constructive knowledge that the transaction would fail is the presentation in good faith by a customer of a cheque which is then dishonoured.*

*(3) Any provision of any contract which purports to allow a fee, penalty or charge which would contravene subsection (1) is void.*

As a general comment, Section 12FA contains a mix of subjective and objective considerations including "good faith", "constructive knowledge" and "actual knowledge". This combination of concepts creates some practical difficulties and is likely to result in inappropriate construction and/or interpretation ambiguities.

In Section 12FA, the term "failed transaction" is undefined. It is unclear as to what is meant by this term.

Similarly, the phrase "actual or constructive knowledge" is used as a benchmark test. However, we consider that there would be practical difficulties for a supplier to determine whether the consumer has "actual or constructive knowledge" that the transaction would fail. As an example, imagine a scenario involving a cheque that hasn't been presented for a period of time, or alternatively, a consumer taking cash out of their account knowing that their account's limit would be exceeded). In these types of scenarios, it would be difficult for the supplier to be able to demonstrate that the consumer had the requisite knowledge.

- Section 12FB

***12FB Penalty fees to be reasonable estimate of loss***

*A person (the **supplier**) must not, in connection with the supply or possible supply of financial services, impose a penalty fee on a person or corporation to whom the financial services are supplied, or are to be supplied (the **consumer**), unless the penalty fee represents a reasonable estimate of the loss suffered by the supplier as a result of the conduct by which the consumer incurs the penalty fee.*

In practice, penalty fees are being imposed by suppliers for things that are a breach of contract. In contrast, exception fees are fees payable for things arising other than as a result of breach of contract.

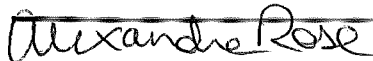
- Commonwealth v state based legislation – uniform approach

We consider it imperative that any changes to Commonwealth legislation should also be consistent with state based legislation. This position does not appear to have yet been clarified.

In conclusion, for the various reasons outlined above, we submit that it is difficult to give appropriate consideration to the possible impact of the legislation on both credit card suppliers and consumers at this point in time and that further drafting work is required.

We would be pleased to respond to any queries the Committee may have in relation to this submission.

Yours sincerely

A handwritten signature in black ink that reads "Alexandra Rose".

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<sup>i</sup> Source: 2007 Fees from CHOICE research based on the average of the five largest banks' fees as published on [www.choice.com.au](http://www.choice.com.au)

<sup>ii</sup> Ibid.